

RESOLUTION NO. 2013-43

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING
THE FIRST AMENDMENT TO THE EMPLOYMENT
AGREEMENT BETWEEN JOHN C. GILBERT AND THE
VILLAGE OF KEY BISCAYNE; AND PROVIDING FOR AN
EFFECTIVE DATE.**

WHEREAS, on January 24, 2012, the Village Council of the Village of Key Biscayne (the “Village”) approved Resolution No. 2012-4 approving an Employment Agreement (the “Agreement”), whereby John C. Gilbert would serve as Village Manager from February 12, 2012 through February 11, 2014; and

WHEREAS, the Village desires to amend the Agreement to extend its term through September 30, 2014 and make other amendments as set forth in the First Amendment to the Employment Agreement (“First Amendment”) attached as Exhibit “A” to this Resolution; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE
OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Approval of Amendment. That the Village Council hereby approves the First Amendment attached as Exhibit “A.” The Village Mayor is authorized to execute the First Amendment on behalf of the Village, in the form which is attached hereto, once approved as to form and legal sufficiency by the Village Attorney.

Section 3. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 3rd day of December, 2013.


MAYOR FRANKLIN H. CAPLAN

ATTEST


CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


VILLAGE ATTORNEY



**FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT BETWEEN
THE VILLAGE OF KEY BISCAYNE
AND
JOHN C. GILBERT**

This First Amendment to the Employment Agreement (the "Agreement") between the Village of Key Biscayne and John C. Gilbert dated February 12, 2012 (the "First Amendment") is made and entered into this 3rd day of December, 2013, by and between the Village of Key Biscayne, Florida, a municipal corporation of the State of Florida (the "Village") and John C. Gilbert ("Employee"). Collectively, the Village and Employee shall be referred to as the Parties.

WITNESSETH

WHEREAS, the Parties entered into the Agreement, attached as Exhibit "A," that commenced on February 12, 2012 and runs through February 11, 2014, whereby the Employee agreed to serve as Village Manager; and

WHEREAS, the Village desires to amend the Agreement to extend its term through September 30, 2014, adjust Employee's compensation to reflect what he is currently receiving, adjust Employee's health insurance benefits so that he receives the same health insurance benefits provided to all other non-represented Village employees and make other minor amendments as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants set forth in this First Amendment the Parties agree as follows:¹

Section 1. Amendment to the Agreement. That Section 2 "Term" of the Agreement is hereby amended as follows:

* * *

SECTION 2. TERM

¹ Additions to existing text are shown by underline; deletions are shown by ~~strikeout~~.

2.1 This Agreement commenced on February 12, 2012 and shall terminate on September 30, 2014, ~~shall have a term of two (2) years commencing on February 12, 2012 and ending on February 11, 2014,~~ unless earlier terminated as provided in this Agreement.

2.2 No later than June 30, 2014, ~~November 13, 2013,~~ unless this Agreement terminated earlier as provided in Sections 3 and 4 of this Agreement, the Council shall notify Employee of its intention to enter into a new agreement, extend this Agreement for such term as the parties may agree or allow this Agreement to expire. Failure of the Council to act shall be deemed a decision to allow this Agreement to expire. In the event this Agreement expires due to the Council's failure to act and Employee is ready, willing and able to continue his employment as Village Manager, the Village agrees to continue providing Employee with his regular bi-weekly salary and benefits as provided herein through ~~April 11, 2014~~ November 30, 2014.

2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3 of this Agreement.

Section 2. Amendment to the Agreement. That Section 3 "Termination by Village and Severance Pay" of the Agreement is hereby amended as follows:

SECTION 3. TERMINATION BY VILLAGE AND SEVERANCE PAY

3.1 In the event Employee is terminated by the Village Council prior to September 30, 2014, ~~February 11, 2014,~~ other than for cause (as is defined in Section 3.2 of this Agreement) and during such time that Employee is willing and able to perform his duties under this Agreement, the Village agrees to pay Employee a lump sum cash payment equal to one (1) week of Employee's salary for each month Employee has served as Village Manager under this Agreement up to a maximum of twenty (20) weeks (the "Severance Pay"), unless the Village has notified Employee of its intention to allow the contract to expire pursuant to Section 2.2 of this Agreement or the Council failed to act pursuant to Section 2.2 of this Agreement, in which case that provision shall apply. In either such event, Employee shall also receive payment for any and all accrued vacation, sick leave and floating holiday time in accordance with the Village's policies governing other general non-police or non-fire employees of the Village ("Administrative Employees"). In accordance with Section 215.425, Florida Statutes, under no circumstances will the Severance Pay provided to Employee exceed an amount greater than twenty (20) weeks of his salary. Severance Pay shall be paid within fifteen (15) working days of termination. The Village shall continue to provide medical coverage for Employee for the same number of weeks as Employee's Severance Pay in the same manner and in the same amount as Employee is receiving at the time of termination. After the payment described above is made, the Village

shall have no further financial obligation to Employee.

* * *

Section 3. Amendment to the Agreement. That Section 5 “Compensation” of the Agreement is hereby amended as follows:

SECTION 5. COMPENSATION

5.1 The initial annual salary of Employee shall be One Hundred and Seventy-Three Thousand Five Hundred Dollars (\$173,500.00), which shall be payable in installments at the same time as other employees of the Village are paid. Effective May 24, 2013, the annual salary of Employee shall be One Hundred and Eighty-Five Thousand Six Hundred and Thirty-Six Dollars and Thirty-Three Cents (\$185,636.33) also payable in installment at the same time as other employees of the Village are paid.

* * *

Section 4. Amendment to the Agreement. That Section 10 “Insurance” of the Agreement is hereby amended as follows:

SECTION 10. INSURANCE

Effective December 3, 2013, the Village shall provide Employee with health, vision, dental and life insurance benefits in the same manner as provided to all other non-represented Village employees and Employee shall be responsible for the premiums for such insurance, if any, in the same manner as the Village’s non-represented employees.

~~Employee will be provided with a \$450.00 monthly flexible benefit stipend. Employee may use such stipend towards the payment of any health and life insurance premiums and/or other benefits offered by the Village. Insurance premiums are paid by the Village and charged against the \$450.00 monthly stipend. In those cases where premiums for the benefits selected by Employee exceed the \$450.00 monthly stipend, the balance shall be deducted from Employee’s pay. In those cases where the Employee elects not to participate in any benefits offered by the Village or the benefits that he selects cost less than the \$450.00 monthly stipend, Employee shall retain the balance of the monthly stipend.~~

Section 5. Amendment to the Agreement. That Section 11 “Vacation Leave, Sick

Leave and Holidays” of the Agreement is hereby amended as follows:

SECTION 11. VACATION LEAVE, SICK LEAVE AND HOLIDAYS

11.1 Employee shall be entitled to vacation leave, sick leave and holidays at the same rate and in the same manner as other Administrative Employees based on Employee’s total years of service with the Village. However, during the first year of this Agreement, Employee may use up to seven (7) days of vacation leave prior to the time it is accrued.

11.2 In the event of the death of Employee during the term of this Agreement, his designated beneficiaries shall be entitled to payment of all of his accrued vacation leave, ~~and~~ sick leave and holidays in accordance with the Village's policies governing Administrative Employees.

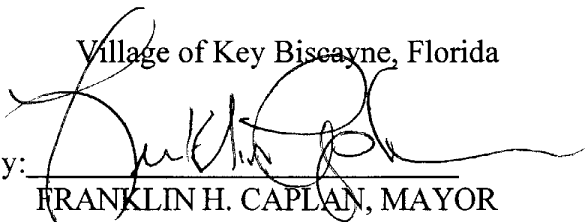
Section 6. No Further Modifications. All other terms and conditions of the Agreement not in conflict or superseded by this First Amendment shall remain in full force and effect as if set forth in full herein.

IN WITNESS WHEREOF, the Parties hereto have accepted, made and executed this First Amendment upon the terms and conditions above stated on the day and year first above written.

Employee

By: 
JOHN C. GILBERT

Village of Key Biscayne, Florida


By: 
FRANKLIN H. CAPLAN, MAYOR

Attest:


CONCHITA H. ALVAREZ, MMC
VILLAGE CLERK



Approved as to Form and Legal Sufficiency:



WEISS, SEROTA, HELLMAN, PASTORIZA,
COLE & BONISKE, P.L.
VILLAGE ATTORNEY